

SAFE HARBOR AGREEMENT

LOWER MOKELUMNE RIVER WATERSHED

1. INTRODUCTION

This programmatic Safe Harbor Agreement (Agreement) is entered into as of _____, 2006 between the California Association of Resource Conservation Districts (Program Administrator) and the U.S. Department of Interior, Fish and Wildlife Service (Service); hereinafter collectively called the “Parties.” The purposes of this Agreement are (1) to promote ecosystem restoration, including the conservation of endangered species, through the voluntary restoration, enhancement, and management of native riparian habitat in the lower Mokelumne River watershed in California, (2) to provide certain regulatory assurances to landowners participating in such restoration, enhancement, and management activities, and (3) to accomplish the foregoing without negatively affecting farming activities. This Agreement follows the Service’s Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), both of which implement section 10(a)(1)(A) of the Endangered Species Act (ESA).

2. LIST OF COVERED SPECIES

This Agreement covers the following Federally listed species, which is hereafter referred to as the “covered species”: Valley elderberry longhorn beetle, *Desmocerus californicus dimorphus*.

3. DESCRIPTION OF ENROLLED LANDS

The properties subject to this Agreement consist of those non-Federal lands in the lower Mokelumne River Watershed in San Joaquin County, California, that are hereafter made subject to Cooperative Agreements between the owners or managers thereof (Program Participants) and the Program Administrator in the form attached hereto as Exhibit 1. Such properties are referred to herein as the “enrolled properties.” The area within which properties may be enrolled is depicted on the attached map and consists generally of those lands lying within the lower Mokelumne River watershed from the confluence with the Cosumnes River, upstream to the Camanche Dam, exclusive of lands within the watershed of Dry Creek upstream of its crossing with Highway 99. The total amount of acreage for potential lands with riparian areas eligible to enroll in the SHA is not expected to exceed 15,000 acres. The total amount of acreage within this area that may be restored to riparian habitat is not expected to exceed 3,500 acres. The enrolled properties are to be more precisely indicated on maps attached to such Cooperative Agreements. Current and recent land use practices on the enrolled properties are likely to be varied and to include grazing, viticultural, and other agricultural uses, as well as recreational uses. Such Cooperative Agreements shall be effective upon the signing thereof by the Program Participant and the Program Administrator.

4. BASELINE DETERMINATION

For each enrolled property, the baseline conditions shall be based upon a survey of the enrolled property, undertaken by a qualified person satisfactory to the Service not more than 18 months prior to the signing of the Cooperative Agreement, to delineate the

locations of all elderberry bushes having 1 or more stems that are 1 inch or greater in diameter at the base. Where possible to estimate baseline conditions based on monitoring and modeling of elderberry bushes in the watershed, such an estimate may be used in lieu of the survey of the enrolled property, provided that the Service, the Program Administrator, and the Program Participant concur. In order to receive the assurances regarding take of covered species specified in Section 10 of this Agreement, a Program Participant must maintain on the enrolled property at least as many such elderberry bushes as were present when the program participant entered into the program and in the same general locations.

5. MANAGEMENT ACTIVITIES

Each Cooperative Agreement shall specify the riparian restoration, enhancement, and management activities to be carried out on the enrolled property to which it applies and a timetable for implementing those activities. These activities shall include those listed as “standard activities” in Exhibit 3 and such “additional activities” listed in Exhibit 3 as the Program Participant agrees to implement. The object of such activities will be to create healthy native riparian plant communities that include elderberry bushes, on the enrolled properties. The Service has determined that implementation of these activities is expected to produce a net conservation benefit for the covered species.

6. NET CONSERVATION BENEFIT

Implementation of this Agreement is reasonably expected to provide a “net conservation benefit” to the covered species, because the collective management activities performed by the Program Participants pursuant to this Agreement are expected to provide an increase in the covered species’ population and/or enhance, restore, or maintain the covered species’ habitat.

Specifically, the Agreement supports recovery objective #5 listed in the Recovery Plan for the valley elderberry longhorn beetle (USFWS 1984) by restoring habitat sites within the presumed historical range of the animal, managing this habitat by removing exotic species as necessary, and protecting these restored sites for a minimum of 10 years. In addition, it is anticipated that many Program Participants will restore native plant species typical of Valley Foothill Riparian habitats, which may encourage colonization of the planted elderberries by the valley elderberry longhorn beetle (River Partners, 2004), as well as provide habitat for other species.

Because valley elderberry longhorn beetle populations appear to have limited dispersal capability (Collinge et al., 2001), colonization of restored habitat will be more likely if valley elderberry longhorn beetles are known to exist within a 10 to 20-km radius of the restored site. The area included in this Agreement is within the requisite radius of several valley elderberry longhorn beetle sightings recorded in the California Natural Diversity Database (e.g., #79 at Clements Glen View Cemetery, #90 on the Mokelumne River, #160 and 161 on nearby Bear Creek). This Agreement will provide additional habitat for

dispersing adults in this metapopulation, potentially increasing their occupied habitat, and therefore is expected to provide a “net benefit” to the species.

7. OTHER RESPONSIBILITIES OF THE PARTIES

A. In addition to entering into Cooperative Agreements with willing non-Federal landowners and managers, as described above, the Program Administrator agrees to:

1. Inform the Service within 30 days of any notification it receives from a Program Participant (or from a neighboring landowner who has entered into an agreement pursuant to Section 8 of this Agreement) of the latter’s intent to make a change in land use likely to reduce the number of living elderberry bushes with 1 or more stems of 1 inch or greater in diameter at the base, and reasonably cooperate with the Service in the event that it chooses to relocate such bushes or capture and/or relocate potentially affected individuals of the covered species in response to such notification;
2. At least triennially, carry out surveys on not less than 20 percent of the total restored habitat on enrolled properties to assess the general condition of elderberry bushes, use of planted bushes by the covered species, and general condition of other native plant species in the restored habitat. Such surveying activities may be carried out on the Program Administrator’s behalf by the East Bay Municipal Utilities District or other qualified entity pursuant to an agreement with the Program Administrator and Program Participant;
3. Provide the Service with an annual report, due by March 31 of each year, in the form attached hereto as Exhibit 2;
4. Notify the Service of any living or dead specimens of the covered species of which it becomes aware on the enrolled properties; and
5. Furnish the Service with copies of all Cooperative Agreements hereunder within 2 weeks after they are signed.

B. In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement, issue to the Program Administrator a permit in accordance with ESA section 10(a)(1)(A), and valid for a period of 50 years, authorizing incidental take of the covered species as a result of implementing management activities specified in a Cooperative Agreement, or as a result of other lawful activities on enrolled properties after the management activities specified in such Cooperative Agreement have been initiated, provided that such taking shall be consistent with maintaining baseline conditions on the enrolled property. The duration of the Agreement will be 50 years. The section 10 permit may extend for an additional 2 years beyond the 50 year duration of the Agreement, so long as prior to or upon expiration of the Agreement, the Service

determines that the conservation actions identified in the Agreement have been implemented and the Program Participants need not perform additional conservation activities on the properties. If extended under the conditions above, the duration of the permit will be 52 years.

2. Provide to the Program Administrator and Program Participants technical assistance, to the maximum extent practicable, when requested; and provide information on Federal funding programs.

8. OTHER LANDOWNERS WHO MAY SECURE INCIDENTAL TAKE AUTHORIZATION

Landowners who own land that abuts the Mokelumne River or its tributaries and is immediately adjacent to enrolled land may, without committing to undertake any management activities described in Section 5 of this Agreement on such adjoining land, secure the incidental take authority conferred by the permit issued by the Service to the Program Administrator pursuant to Section 7.B.1 of this Agreement, provided: (1) such adjoining landowner enters into a written agreement with the Program Administrator in the form attached hereto as Exhibit 5; (2) such written agreement specifies the baseline conditions on such adjoining property; and (3) activities resulting in such incidental take are consistent with maintaining the baseline conditions on such adjoining property. Where possible to estimate baseline conditions based on recent aerial photos, surveys undertaken from public roadways, adjacent lands, or other similar locations, the Program Administrator may, with the concurrence of the Service, propose a baseline on such basis. The adjoining landowner may either accept the Program Administrator's proposed baseline conditions or have undertaken at his own expense a survey to establish the baseline conditions more precisely. Under either event, the determination of baseline conditions shall be made by a qualified person satisfactory to the Service.

9. AGREEMENT AND PERMIT DURATION

The Agreement becomes effective upon issuance by the Service of the ESA section 10(a)(1)(A) permit described in Section 7 of this Agreement, and will be in effect for 50 years. Cooperative Agreements developed pursuant to this Agreement will be for a term of at least 10 years. When the Service determines that the conservation actions identified in the Cooperative Agreements have been implemented, then the Program Participants need not perform additional conservation activities on the property and the section 10 permit may continue in effect following termination of the Agreement for an additional 2 years. In such case, the section 10 permit authorizing incidental take of the VELB will be for a duration of 52 years from the effective date of the permit. The additional duration of the permit following termination of the Agreement will continue section 10(a)(1)(A) permit coverage of the Program Participants for two years to allow a return of the enrolled property to its baseline condition. This Agreement and the permit described in Section 7 of this Agreement may each be extended by mutual written consent of the parties.

10. ASSURANCES REGARDING TAKE OF COVERED SPECIES

Provided that such take is consistent with maintaining the baseline conditions identified in Section 4 of this Agreement, the ESA section 10(a)(1)(A) permit referenced in Section 7 of this Agreement shall authorize the taking of covered species incidental to otherwise lawful activities by Program Participants (and by neighboring landowners who have entered into agreements pursuant to Section 8 hereof), their employees or agents, and those authorized by law to control flooding in the Mokelumne River watershed in the following circumstances:

1. Implementing the management activities identified in Section 5 of this Agreement; or
2. Making any lawful use of the enrolled property of the Program Participant after the management activities identified in Section 5 of this Agreement have been initiated, including but not limited to farming, ranching, or other agricultural use, use of registered pesticides and herbicides (provided that such use is in accordance with label restrictions, “standard activities” specified in Exhibit 3 and such “additional activities” from Exhibit 3 that are included in Exhibit B of the Cooperative Agreement), recreation, use and maintenance of access paths and of roadways, levee repair and maintenance, maintenance of floodways, and emergency flood fighting.
3. Returning to baseline.

11. MODIFICATIONS

A. Modification of the Agreement. Either party may propose amendments to this Agreement by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties’ written concurrence.

B. Termination of the Agreement. As provided for in Part 12 of the Service’s Safe Harbor Policy (64 FR 32717), a Program Participant may terminate his Cooperative Agreement with the Program Administrator for circumstances beyond his or her control by giving written notice to the Program Administrator. In such circumstances, the Program Participant may, pursuant to the permit referenced in Section 7.B.1 of this Agreement, return the enrolled property to baseline conditions even if the management activities identified in Section 5 of this Agreement have not been fully implemented.

C. Permit Suspension or Revocation. The Service may suspend or revoke the permit referenced in Section 7.B.1 above for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Program Administrator or any Program Participant has the right to appeal any suspension or revocation to a mutually agreed upon arbitrator.

D. Baseline Adjustment. The baseline conditions for any enrolled property may, by mutual agreement of the Parties and the Program Participant, be adjusted if, during the term of the Cooperative Agreement and for reasons beyond the control of the Program Participant or as an unintended result of properly-implemented management activities, the number of living elderberry bushes with 1 or more stems of 1 inch or greater in diameter at the base is reduced from what it was at the time the Cooperative Agreement was negotiated.

E. Inability of the Program Administrator to Continue. If the Program Administrator shall, for any reason, cease to be able to perform its obligations under this Agreement, it shall give written notice of that fact to the Service at least 60 days prior to ceasing to perform its obligations under the Agreement. Upon receiving such notice, the Service may, at its discretion after consultation with Program Participants, either amend this Agreement and the associated permit to substitute a new Program Administrator, or, if a Program Participant prefers, convert any previously approved Cooperative Agreement into an individual agreement between the Program Participant and the Service under the same substantive terms.

12. OTHER MEASURES

A. Remedies. No party shall be liable in monetary damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

C. Succession and Transfer. As provided in Part 11 of the Service's Safe Harbor Agreement Policy, if a Program Participant transfers his or her interest in the enrolled property to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the enrolled property as the original Program Participant, if the new owner or manager agrees to become a party to the Cooperative Agreement in place of the original Program Participant.

D. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

E. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages

pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law. In the event that any third party successfully challenges the permit referenced in Section 7.B.1 of this Agreement, the Service shall, at the request of a Program Participant, remove and relocate away from the enrolled property any elderberry bushes on the enrolled property in excess of baseline conditions.

F. Other Listed Species, Candidate Species, and Species of Concern. In the event that other riparian-associated species in the lower Mokelumne River Watershed in San Joaquin County not initially covered by this Agreement are subsequently listed as threatened or endangered under the Endangered Species Act, the parties agree to amend this Agreement, and subject to the concurrence of the Program Participant, any Cooperative Agreements previously approved hereunder, to include such other species as Covered Species. The amendment of any Cooperative Agreement pursuant to this provision shall specify as the baseline for such subsequently listed species the lesser of the following:

- (1) the amount of habitat for that species on the enrolled property that existed at the time the Cooperative Agreement was signed (as determined by a qualifying vegetational survey, if the survey was carried out within 18 months prior to such signing), or
- (2) the amount of habitat for that species on the enrolled property at the time of the amendment of such Cooperative Agreement as determined by a qualifying vegetational survey.

The term “qualifying vegetational survey” refers to a survey conducted substantially in accordance with either the California Native Plant Society’s (CNPS) Releve Protocol (California Native Plant Society Vegetation Committee October 20, 2000; revised 4/2/04), or by using the existing vegetation classification and mapping protocol referenced in *Terrestrial Vegetation Communities of the Lower Mokelumne River, California* (Kent A. Reeves and James S. Jones, 2004, published by and available from East Bay Municipal Utilities District, 1 Winemaster Way, Suite K2, Lodi, CA 95240).

G. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

California Association of Resource Conservation Districts
3823 V Street, Suite 3
Sacramento, CA 95817

Project Leader
Sacramento Fish and Wildlife Office
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, California 95825

13. RELATIONSHIP TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN

Lands established as Preserves under the San Joaquin county Multi-Species Habitat Conservation and Open Space Plan (“SJCMShCP”) may be enrolled under this Agreement, and vice versa, provided that nothing in either this Agreement or the SJCMShCP diminishes or enlarges any obligations imposed by the other with respect to such lands.

Literature Cited

Collinge, S.K., M. Holyoak, C.B. Barr, and J.T. Marty. 2001. Riparian habitat fragmentation and population persistence of the threatened valley elderberry longhorn beetle in central California. *Biological Conservation* 100 (2001) 103-113.

River Partners, 2004. Survey of planted elderberry on Sacramento River National Wildlife Refuge riparian restoration sites for use by Valley elderberry longhorn beetles. Prepared for US Fish and Wildlife Service, Sacramento. February 23, 2004.

US Fish and Wildlife Service, 1984. Valley elderberry longhorn beetle recovery plan. US Fish and Wildlife Service, Portland, Oregon. June, 1984.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit referred to in Section 7.B.1 above.

Executive Director
California Association of Resource
Conservation Districts

Date

California/Nevada Operations Deputy Manager
U.S. Fish and Wildlife Service

Date

EXHIBIT 1
Cooperative Agreement

This is a voluntary agreement that recognizes the unique and important role that private landowners in California can play in helping wildlife valued by the people of the state and of the nation. The purpose of the agreement is to enable land management activities beneficial to rare species to be carried out on privately owned land while minimizing the impact of such activities on the right and ability of the owner or manager thereof to use it as he or she wishes. The terms of this agreement are as follows:

1. The California Association of Resource Conservation Districts ("Program Administrator") and _____ (Program Participant) have entered into this Agreement to improve and manage native riparian habitat for the betterment of wildlife, including endangered species, on certain land owned or managed by the Program Participant that are delineated on the attached map (Exhibit A), and referred to herein as the "enrolled property."
2. The United States Fish and Wildlife Service (Service) has issued to the Program Administrator an endangered species permit that authorizes, until the year [20..], the incidental taking of valley elderberry longhorn beetles by Program Participant and other persons who enter into cooperative agreements with the Program Administrator pursuant to the permit.
3. Program Participant agrees to conduct, or allow to be conducted, activities to restore, enhance, or manage native riparian habitat in accordance with the plan set forth in the attached Exhibit B, and maintain such habitat for a period of 10 years from the date of this Agreement.
4. The Program Participant further agrees to provide the Program Administrator with a brief report, due December 31 of the year following the signing of this Cooperative Agreement, and annually thereafter. Such report, in the format shown in Exhibit 4 or in any other simple format to be developed by the Program Administrator, shall identify any management activities undertaken to restore, enhance, or manage native riparian habitat on the property subject to this Cooperative Agreement, as well as any changes in the extent of native riparian habitat in the preceding year. The Program Participant understands and agrees that the Program Administrator will include these annual reports with the reports that it is required to submit to the Service from time to time. The Program Participant further agrees to promptly report to the Program Administrator the observation of any living or dead specimens of the Valley elderberry longhorn beetle.
5. In consideration of the foregoing, the Program Administrator has issued to the Program Participant the attached Certificate of Inclusion under the Program Administrator's permit. This Certificate authorizes the Program Participant and the Program Participant's successors or assigns:

- a) to take the species identified above incidental to implementing the management activities set forth in this Agreement;
- b) after initiation of, and consistent with such management activities, to carry out any other lawful activity that may cause the incidental taking of such species on Program Participant's property, provided that such taking does not reduce the number of living elderberry bushes below the amount specified in Part 7 below.

As used in this Cooperative Agreement, "incidental" take refers to the unintentional or unavoidable killing or injuring of the species identified above in the course of carrying out otherwise lawful activities. Nothing in this Cooperative Agreement authorizes Program Participant to capture, collect, or deliberately kill or injure any such species.

6. After the agreed-upon management activities have been initiated, Program Participant agrees to give the Program Administrator at least 90 days notice (except when precluded by emergency situations) prior to commencing any change in land use likely to reduce the number of living elderberry bushes with 1 or more stems 1 inch or greater in diameter at the base on the enrolled property, and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individuals of the above species and translocate elderberry bushes from Program Participant's land to avoid their loss.

7. The Program Participant and the Program Administrator agree that at the time that this Cooperative Agreement was signed, there were [X] living elderberry bushes with 1 or more stems of 1 inch or greater in diameter at the base on the enrolled property located at the general locations indicated on Exhibit A. That number of living elderberry bushes in those general locations shall be considered the "baseline conditions" applicable to the property. So long as at least that number of living elderberry bushes of that size remain in the same general locations on Program Participant's enrolled property, Program Participant may incidentally take the species as provided in Part 5 above. If requested by the Service within 90 days of its receiving a copy of the Cooperative Agreement, the Program Participant agrees to allow the Service access to the enrolled portion of Program Participant's property for the sole purpose of verifying the baseline determination set forth in this paragraph.

8. Successors and assigns may incur the responsibilities and benefits of this Agreement by becoming a party thereto, unless terminated in writing as specified below. If Program Participant decides to sell or otherwise transfer ownership or management of the property, Program Participant agrees to give the Program Administrator notice of such decision prior to the intended sale or transfer and to give the purchaser or transferee notice of this Cooperative Agreement so that the purchaser or transferee can become a party to it if he or she so wishes. Program Participant will inform the Program Administrator in the event all, or part of, the Program Participant's property delineated on the map labeled Exhibit A is transferred to another owner.

9. The Program Participant shall grant the Program Administrator access to Program Participant's property to confirm that the restoration, enhancement, or management

activities set forth in Exhibit B have been conducted, and to assess the condition of the habitats being managed under the Cooperative Agreement. The Program Administrator shall give the Program Participant reasonable notice of these visits and shall be accompanied by the Program Participant or an agent of the Program Participant if the Program Participant so desires.

10. The Program Participant, or the Program Participant's successors or assigns, may terminate the Cooperative Agreement for reasons beyond their control at any time by giving 60 days written notification to the Program Administrator, in which case the Program Participant or the Program Participant's successors or assigns' right to incidentally take the species under the permit and Certificate of Exclusion shall expire two years after giving such notice. This Cooperative Agreement can be renewed, extended, or modified at any time subject to both the Program Participant's and the Program Administrator's approval. The baseline conditions in any renewal or extension of this Cooperative Agreement shall be the same as set forth in Part 7 above.

11 Program Participant and the Program Administrator agree with respect to liability and indemnification for injuries to persons or property arising out of this Agreement as follows: [details may vary from agreement to agreement] Program Participant assumes no liability for injury to any employee or representative of Program Administrator in the course of any visit to the property under this agreement. Program Administrator shall not be liable for any damage to the property of the Landowner arising from any visit to the property pursuant to this agreement.

12. So long as the permit and Certificate remain in effect, and provided the management activities required by this Agreement have been carried out, the Program Participant may exercise the right conferred by the Program Administrator's permit and the Certificate to incidentally take the species identified above on the enrolled property.

13. Nothing herein affects the right of the Program Participant to seek to establish the enrolled property as a Preserve under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJCMShCP"), but neither this Agreement nor the SJCMShCP diminishes or enlarges any obligations imposed by the other.

California Association of Resource _____, Program
Participant
Conservation Districts

By _____

By _____

Date _____

Date _____

Exhibit A

[map of the property subject to the cooperative agreement]

Exhibit B

[specifications for management actions to be carried out]

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [DESCRIPTION], owned by [NAME OF PROGRAM PARTICIPANT], is included within the scope of Permit No. _____ issued by the U.S. Fish and Wildlife Service on [DATE] for a period of 50 years to the California Association of Resource Conservation Districts under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such permit authorizes certain activities by participating landowners as part of a safe harbor program to restore and enhance habitat for the valley elderberry longhorn beetle. Pursuant to that permit and this certificate, the holder of this certificate is authorized to engage in activities on the above described property that may result in the incidental taking of such species, subject only to the terms and conditions of such permit and the cooperative agreement entered into pursuant thereto by the California Association of Resource Conservation Districts and [NAME OF PROGRAM PARTICIPANT] on [DATE].

Name and Title of Representative of the California
Association of Resource Conservation Districts

Date: _____

EXHIBIT 2
Annual Report for
Safe Harbor Agreement between the U.S. Fish and Wildlife Service
and California Association of Resource Conservation Districts

Permittee's Name: California Association of Resource Conservation Districts

Permit Tracking Number: TE-XXXXXX-0

Location: Mokelumne River Watershed, San Joaquin County, California

Agreement Approved by: California/Nevada Operations Office, U.S. Fish and Wildlife Service

Covered Species: Valley elderberry longhorn beetle

Report on the Monitoring Program (1-2 paragraphs): Describe in general terms the results of any surveys carried out pursuant to Section 7.A.2 of the Safe Harbor Agreement in the year covered by the report; append a copy of the report. Describe any major changes in the collective condition of elderberry bushes included in the baseline or planted as part of the Program Participants' restoration plans. Describe any evidence of utilization of such habitat by the covered species. Append to this report copies of all reports submitted to the Program Administrator by Program Participants since the last annual report.

Date Annual Report is Due: On or before March 31, for the prior calendar year

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer _____

Report on Area wide Management and Conservation Actions (1-2 paragraphs): As necessary to supplement the monitoring reports above, summarize the extent and condition of restored native riparian vegetation on the collective enrolled properties. Describe any apparent year-to-year trends in restoration success in the region, as well as significant differences in restoration success between reached and-or sites. Describe any relevant regional conditions (e.g., drought, flood) that may be required to interpret the management activities described in the appended annual reports from the Program Participants. Finally, please convey any suggestions for adaptive management of restored areas that may have emerged from the program so far.

EXHIBIT 3

Management Activities

Standard Activities

At least one of the following two management activities shall be included in all cooperative agreements:

- Plant native species typical of the canopy, subcanopy, shrub, and herbaceous layers found in Valley Foothill Riparian habitats¹, preferably with stock obtained from local sources; if elderberries already exist on the site, recruitment and growth of additional elderberries will be encouraged via natural processes, **and/or**
- Plant elderberry bushes, using local stock when practical, at a density of at least 24 bushes per acre, or at a density appropriate for conditions at the site.

In addition, both of the following management activities shall be included in all cooperative agreements:

- Limit pesticide and herbicide use within the restored area to those contact herbicides necessary to control invasive weeds.
- Do not use aerial application of pesticides or herbicides within 100 feet of the restored area, except in extreme weather that precludes other pesticide application equipment from moving through the fields.

Additional Activities

A Program Participant may elect to include one or more of the following management activities in a cooperative agreement:

- Undertake reasonable efforts to remove non-native invasive species as appropriate to facilitate restoration.
- Monitor new plantings until they are established and adjust management practices (such as irrigation, if required) accordingly.
- Create riparian pastures that promote sustainable grazing management.
- Implement prescribed burns to foster restoration of native riparian habitat, following U.S. Fish and Wildlife Service guidelines for the protection of elderberry shrubs during prescribed burns.
- Within 25 feet of the nearest elderberry bush planted as part of the initial restoration plan: monitor insect activity and nuisance plant growth; use pesticides and herbicides

¹ As defined in the "California Wildlife Habitat Relationships System" adopted by the California Department of Fish and Game. It is an adaptation of the description found in *A Guide to Wildlife Habitats of California* by K.E. Mayer and W. F. Laudenslayer, published by the California Department of Forestry and Fire Protection in 1988.

only when economic thresholds for insect pests and weeds have been exceeded and wind conditions minimize drift potential; and use the lowest-risk pesticides and herbicides appropriate to the task, as detailed below. The following may be revised to reflect advances in pest management science if such changes are approved by the Program Administrator and the Service.

- Monitor at recommended intervals² for the important insect, disease, vertebrate and weed pests as identified in the University of California pest management guidelines (<http://www.ipm.ucdavis.edu/PMG/crops-agriculture.html>).
- Do not treat for any pest unless the economic threshold for that pest has been exceeded (<http://www.ipm.ucdavis.edu/PMG/crops-agriculture.html>).
- When making a decision whether to treat or not, take into consideration the presence of pests' natural enemies, if these species are important to the natural control of the pest (e.g., mite predators in the case of Willamette or Pacific mites, or *Anagrus* wasps in the case of leafhoppers).
- If treatment is necessary use only low risk pesticides. For vineyards, the Pesticide Environmental Assessment System (PEAS)³ model can be used to determine which pesticides are low risk.
- Spot treat, if possible, (i.e. only treat pest affected areas, not the entire vineyard or cropped area).
- Assure that sprayers/dusters have been calibrated for the material being used.
- Do not spray/dust when winds will carry the spray/dust off of the property or into the restored area.
- If application of herbicides is necessary, use a shielded sprayer to apply the herbicide.
- To the extent feasible, minimize dust in and around the property by watering or sealing roads and growing cover crops.
- Keep records of monitoring, economic threshold and toxicity determinations, and pesticide or herbicide use within the 25-foot buffer zone; provide these records to the Program Administrator and/or the Service on request.

² Every 10 days for vineyards.

³ The PEAS model was developed by Dr. Chuck Benbrook, Benbrook Consulting Services. The primary goal of PEAS is to quantitatively identify risk for each pesticide used in the vineyard. Risk is calculated as pesticide impact units and is based on 5 indices: 1) Toxicity to *Daphnia*; 2) Toxicity to birds; 3) Toxicity to bees; 4) Worker exposure; and 5) Dietary exposure. The PEAS model calculates the number of pesticide impact units based on the amount of material applied per acre for each application, the method of application, and the time of day and time of year the material is applied. Pesticides having 10 or fewer impact units per application are considered low risk for purposes of this Agreement. Instructions for using the PEAS model can be obtained from the Lodi-Woodbridge Winegrape Commission.

Exhibit 4
Annual Report from Program Participant to Program Administrator

Directions: Walk through the restoration area observing overall conditions and paying particular attention to elderberry bushes. You may wish to have your baseline maps and restoration plan handy for reference. Explanations can be brief (one or two sentences). Please refer to the sample photos provided by the Program Administrator to assess the condition of elderberry bushes and other native vegetation.

At the discretion of the Program Administrator, you may substitute for this form a monitoring report provided to you by a biologist or restoration professional familiar with the Valley elderberry longhorn beetle.

Condition of Elderberry Bushes

1. Of the elderberry bushes or clumps of elderberry bushes documented in Exhibit A (your pre-restoration baseline), how many are in

- Excellent condition (growing larger and denser, possibly reproducing) ____
- Fair condition (no signs of stress, but little or no growth) ____
- Poor condition (showing signs of stress) ____
- No longer alive ____

Alternative to Question 1: Provide a photograph of each elderberry bush or clump of bushes listed in Exhibit A.

2. Of the elderberry bushes planted as part of the restoration plan described in Exhibit B, approximately what percentage (or how many) are in

- Excellent condition ____
- Fair condition ____
- Poor condition ____
- No longer alive ____

Alternative to Question 2: Provide photographs that show the condition of a representative sample of the elderberry bushes planted as part of the restoration project.

3. If you have noticed any “exit holes” that appear typical of Valley elderberry longhorn beetles, please note here the number of bushes on which you have noticed them.

Condition of Other Native Plants and the Restored Riparian Area

4. What is the general condition of the native vegetation that was planted as part of the restoration plan? (If relevant, please note the condition of the canopy, subcanopy, shrub, and herbaceous layers separately.)

- Excellent condition ____
- Fair condition ____
- Poor condition ____

- No longer alive ____

Alternative to Question 4: Provide photographs taken from several locations within the restored site to show annual changes. These locations should be marked for reference on Exhibit B and should remain the same from year to year.

5. Has the extent of the area that supports native riparian vegetation changed within the past year? For example, has the area expanded naturally or has it markedly decreased due to fire, flood, drought, or other natural disturbance?

- Expanded ____
- Decreased ____
- Stayed the same ____

Please explain briefly the extent and causes of any noticeable increase or decrease.

6. Did non-native grasses or other invasive species

- Spread ____
- Degrade or dominate portions of the native plantings ____
- Remain about the same ____

Please describe any action you took to control the spread of non-natives.

7. Have you noticed a change in the types or numbers of birds, beneficial insects, or other wildlife in the restored area? If so, please describe these briefly.

Management Activities

8. In what month and year were the restoration activities substantially complete? _____

9. Please list the types of activities (e.g., irrigation, grazing) you undertook this year to maintain or manage the restoration area this year and note whether they differed significantly from the activities described in Exhibit B of your Cooperative Agreement.

EXHIBIT 5
Neighboring Landowner Agreement

1. [Owner] owns land (hereafter “the Property”) in San Joaquin County, California, that is designated on the attached map and that is adjacent to land enrolled in the Programmatic Safe Harbor Agreement between the California Association of Resource Conservation Districts and the United States Fish and Wildlife Service (hereafter “the Service”), dated [date]. The Programmatic Safe Harbor Agreement, and the permit issued by the Service to the California Association of Resource Conservation Districts in connection therewith, authorizes participating landowners who enter into cooperative agreements to restore riparian habitat on land enrolled in the program to take endangered Valley Elderberry Longhorn Beetles incidental to farming, ranching, and other lawful activities on the enrolled land, provided that baseline habitat conditions as specified in such cooperative agreements are maintained.

2. The California Association of Resource Conservation Districts serves as the Program Administrator of the foregoing Programmatic Safe Harbor Agreement, and as such is authorized by that Agreement to enter into both cooperative agreements with landowners who enroll land in the Programmatic Agreement, and similar Neighboring Landowner Agreements with landowners who own land adjacent to land enrolled in the Agreement. Such Neighboring Landowner Agreements confer upon such neighboring landowners the same rights to take endangered species incidental to lawful activities on such neighboring land, subject to requirements as are set forth in this Agreement, as cooperative agreements confer upon landowners who enroll land in the Programmatic Agreement.

3. The California Association of Resource Conservation Districts has determined that the “baseline conditions” applicable to the Property are as follows: [number] living elderberry bushes with 1 or more stems of 1 inch or greater in diameter at the base occur on the Property at the general locations indicated on the attached map. So long as at least that number of living elderberry bushes of that size remain in the same general locations on the Property, [owner] may incidentally take Valley elderberry longhorn beetles in the course of any lawful use of the property, subject to Section 4 below. As used herein, “incidental” take refers to the unintentional or unavoidable killing or injuring of Valley elderberry longhorn beetles in the course of carrying out otherwise lawful activities. The restoration of riparian habitat on land enrolled in the Program shall not affect in any way the use by the Owner of pesticides or herbicides on the Property. Nothing herein authorizes [Owner] to capture, collect, or deliberately kill or injure any such beetles.

4. [Owner] agrees to give the the California Association of Resource Conservation Districts at least 90 days notice (except when precluded by emergency situations) prior to commencing any change in land use likely to reduce the number of living elderberry bushes with 1 or more stems 1 inch or greater in diameter at the base on

the Property, and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individual Valley elderberry longhorn beetles and translocate elderberry bushes from the Property to avoid their loss.

5. This Neighboring Landowner Agreement remains in effect until the expiration of the Programmatic Safe Harbor Agreement between the California Association of Resource Conservation Districts and the Service on [date].

6. Nothing herein affects the right of [Owner] to seek to establish the Property as a Preserve under the San Joaquin County Multispecies Habitat Conservation and Open Space Plan (“SJCM SHCP”), but neither this Neighboring Landowner Agreement nor the SJCM SHCP diminishes or enlarges any obligations imposed by the other.

[Owner]

Date

California Association of Resource Conservation Districts

Date